

REMARKS

This Amendment is in response to the Official Action dated May 21, 2003. There is a confusion and dispute about the enumeration of the claims. However, the undersigned understands, based on many years of practice before the U.S. Patent and Trademark Office, that claims are to be enumerated consecutively commencing with 1 and the same numeral should not be used for two different claims, albeit the wording of individual claims can be amended within limits. Using this system of enumeration, at present all claims presented and as numbered by Applicant which are Claims 1-79 have been cancelled without prejudice and new Claims 80-102 are added hereto.

Concerning the enumeration of claims, the individual statements set forth in paragraphs 2 on page 2 of the Official Action are not incorrect. However, the statement in paragraph 4 on page 2 is incorrect because in the original Application, as filed, there were 28 claims. A copy of the original 28 claims is appended hereto for information. It will be noted that Claims 1 and 2, as amended, by the Preliminary Amendment, contained individual amendments which track Claims 1 and 2 of the original claims. Also in the Preliminary Amendment all claims except Claims 1 and 2, that is Claims 3-28, were cancelled and new Claims 29-56 were added.

Also with the Preliminary Amendment a Substitute Specification together with a marked-up copy of the original Specification were submitted. Both the Substitute Specification and the original Specification did not, of course, include claims because it was the "Specification," not the claims that was so being filed in the Preliminary Amendment. The original Application was a copy of International Application No. PCT/NL99/00791.

It seems possible that the Patent Examiner may have misconstrued the Substitute Specification or the marked-up copy of same as being the original Specification.

In the Amendment filed April 3, 2003, Claims 57-79 were added. Accordingly, the proper enumeration for the new claims set forth herein commences with Claim 80 and thus includes Claims 80-102.

Attention is also invited to the communication from the U.S. Patent and Trademark Office dated November 7, 2000 wherein it was stated that the Specification did not include at least one claim. However, inasmuch as we had this difficulty arise on several past occasions, the personnel responsible at the U.S. Patent and Trademark Office were telephoned and as set forth in a withdrawal notice dated November 21, 2000, it was noted that the notice of November 7, 2000 was sent in error, the Application was complete and would be processed for examination. Accordingly, it would seem that beyond peradventure the Application, as filed, included the claims as set forth in the appendix to this Amendment.

If, after reading the foregoing and reviewing the file at the U.S. Patent and Trademark Office, the Examiner continues to persist in holding that the claims should be renumbered, then it is strongly suggested that the undersigned be telephoned whereupon a comparison of our file and the file at the U.S. Patent and Trademark Office can be made in the course of an Interview.

Bridging pages 2 and 3 of the Official Action, the Examiner considered that Claim 40 (correctly Claim 66) was unclear due to the recitation "said reservoirs have similar configurations." In the instant Amendment, this is applicable to Claim 89 in which, "have similar configurations" has been deleted to show that the Amendment is to the effect that the reservoirs are interchangeable.

The instant invention is directed to a feeding column for animals such as cows. The column comprises a central axis surrounded by several reservoirs and several (actually 12) side-by-side feeding troughs. Between the reservoirs and the feeding troughs is a movable metering device for weighing food or liquid which is delivered from a selected reservoir to a selected

feeding trough. Each feeding trough is provided with an identification means for identifying an animal at the trough. Dairy farms are being increasingly automated and an ongoing effort is being made to reduce manual labor and maximize the use of facilities which can be relatively expensive. The facilities often include sheds which have concrete floors wherein the dairy cattle are fed. An object of the invention is to provide compact feeding columns which provide that the cows can be fed from a feeder while being disposed about as close together as the arrangement and organization of the feeder permits, whereupon the feeding operation utilizes a minimal amount of space in the shed while the cows are being fed. Dairy cows consume a considerable amount of food each day and drink an average of about 25 gallons of water each per day. It has long been known that it is advantageous to identify each cow and feed her the right amounts and types of feed which is individually best for her nutritional needs. The invention involved in this Application relates to a feeding column for feeding a plurality (12) dairy cows at one time in conformity with their individual nutritional needs. A feed delivery component between the reservoirs which contain different types of feeds and the individual troughs includes a weighing device. Alternatively, each individual trough may be provided with its own weighing device. The weighing component between reservoirs and troughs is movable, whereby the weight and type of feed provided each cow can be adjusted in accordance to the identity of that cow.

The columns in accordance with the invention, although sturdy, are constructed of different interchangeable components which can be attached and detached at site without tools. This is an important aspect of the invention because it permits the dairy owner to install as well as to take apart and move feeding columns as may be desirable in a timely and efficient manner.

In the Official Action, the claims were rejected on the basis of U.S. Patent No. 5,740,757, of Smeester, which is for a method and apparatus for feeding animals in a herd, particularly bison. It is pointed out in the Official Action that Smeester discloses a bison feeder 10 which is

asserted to have a central axis having three feed stations 86. Each feed station 86 has a conduit 84. Each feed station 86 receives feed from feed storage 16 via augers 82. Also medication is provided to each feeding station from medication chutes 70. Augers are provided which are controlled to permit individualized rationing for the bison and the herd, administering feed supplements and medication with the feed, applying a fly spray to the bison during feeding and limiting the amount of feed provided to any one animal in conformity with the desires of the rancher. Although the bison feeder may be provided as a separate unit housed in a building, the disclosure is directed to a feeder which is towed to a location on the range as selected by the rancher. Bison feeding and feeding stations are separated from each other by extensible separating legs which provide additional stability to the unit. In addition, screens or plates are provided to obscure or limit the view of the bison during feeding for the purpose of limiting the normal quarrelsome nature of the animal. Each bison is provided with a tag on its right ear to ensure an antenna 98 on panel 94 is sufficiently near to identify the animal which is at the feed station 86 involved.

Although the instant invention and that disclosed by Smeester are broadly directed to the function of feeding animals, the advantages, problems and solutions are very distinct. It is self-evident that to utilize Smeester's method and apparatus for feeding a herd of bison for Applicant's column for feeding or drinking, or both, of dairy cows and the like would be absurd. The objective of the instant invention is to provide an effective nutritional apparatus for providing feed or drink, or both, which occupies a minimal amount of space per animal and which can be readily assembled and disassembled without difficulty on site. An important aspect of the instant invention is also to provide the most efficient use of space per animal at the feeding trough as is reasonably attainable. For this purpose it has been found that, considering the shape of dairy cattle, a structure located around a central axis provides a solution which is

synergetic with the use of interchangeable parts and ease of assembling and disassembling the columns. Smeester recognizes that bison are inherently different animals than domestic cattle and to prevent larger animals from taking feed intended for smaller bison, Smeester isolates his three feed stations as much as possible in a manner in which larger and more dominant bison are less likely to be aware that smaller bison may be feeding from the same apparatus. Smeester also has a problem of dealing with the much larger head of a mature bull bison as compared to a small bison calf. The case of Eskimo Pie Corp. v. Levous et al, 3 USPQ 23 (3rd Cir. 1929) to the effect that difference in shape without difference in function is not patentable, is inapplicable. In the instant situation, the shape of the inventive column is critical to its function and Smeester certainly is not suggesting that his apparatus teaches or leads to the function of the instant invention. Incidentally, the Eskimo Pie case antedated 35 U.S.C. §103 by many years and is fact intensive relying upon the prior art which was quite close to apply language directed to only one claim (Claim 6) and treating such language as a statutory pronouncement constitutes, it is submitted, an undue complicating of statutory construction. The question here is whether in the combination claimed, a framework that includes horizontal beams that coincide with and define a circle and the cross-section of the framework perpendicular to the central axis is substantially circular can be eliminated from consideration as part of the claimed combination in view of 35 U.S.C. §103? In this respect, it is submitted that the law is clear; this is not permitted under 35 U.S.C. §103.

The Official Action also argues that it would have been obvious to one of ordinary skill in the art to have rearranged parts of the device of Smeester so that the feeding stations were "side-by-side." For this proposition, the case of In re Japikse, 86 USPQ 70 (CCPA 1950), is cited. Like Eskimo Pie, supra, the case of In re Japikse is factually intensive and does not appear, in any event, to stand for the proposition for which it was cited. One of the references

was alleged to be inoperative relating to the shape of the beaver tails. However, it was considered that the cure was obvious and therefore the inoperativeness allegation was not upheld. In any event, it is submitted that Smeester does not suggest a side-by-side disposition of his feeding stations, but just the opposite; he very intentionally spaces his three feeding stations about as far away from each other as possible in order to avoid feeding interference of bison calves by the much larger and dominant bison bulls. It is fundamental that in considering the teachings of any particular reference, the relevant portions of a reference to be considered should include not only those which would suggest particular aspects of the invention to one having ordinary skill in the art, but also those which would lead a person away from the claimed invention. See In re Lunsford, 148 USQP 716 (CCPA 1966). It is also a well-settled principle that prior patents are references only for what they clearly disclose or suggest and it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

The Examiner cites Nerwin v. Erlichman, 168 USPQ 177 (PO Bd Pat Inter. 1969), for the proposition that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feeding trough, reservoirs and partitions detachable from the framework based on a holding that constructing a formally integral structure in various elements involves only routine skill in the art. It is submitted that Nerwin v. Erlichman is not applicable to the instant Application inasmuch as there is no issue involved here that a given structure of the prior art is integral. Again, the case which involves an Interference is factually intensive and of no real consequence insofar as the instant invention is concerned. In the instant case, the detachability of the units, particularly their detachability or assembly without the need for tools, is an important aspect of the invention. In the instant invention the capacity to assemble and disassemble the invention is of importance relative to its economy of use. Moreover, the ease of

assembling and disassembling the invention is related to its circular cross-section and the framework which is disposed concerning such disposition. Albeit as a matter of logic something may be integral and yet be made of components which can be removed, this does not lead to a conclusion that the ease of assembly or disassembly of a column may not be an important aspect of Applicant's invention.

The Examiner admits, in effect, that Smeester does not teach the use of a weighing device to "particularize" the dosages, but alleges that it would be obvious inasmuch as Smeester utilizes augers for this purpose. However, Smeester utilizes augers 66 at the bottom of the feed hopper 72 as well as for the medication chutes 70. The reason that the augers are used is to limit the amount of feed or medication, or both, which will be received at a feeding station which is being used by a bison that should not be at the feeding station. Thus the augers could make only a partial turn whereby the bison not intended for the feeding station receives only a fraction of the feed. The augers are also used for bison that are intended to be in the feed stations and the amounts of feed or medication, or both, are dosed in accordance with the identification of that bison. With the instant invention the amount of feed or drink, or both, received at any one trough can be from one or several reservoirs and it may be important for the dairy farmer to be apprised when a cow is not eating all of the feed being supplied. Thus weighing means does more than "particularize" the dosages; it lets the dairy farmer know that an individual is not consuming as much feed or water, or both, as it should be consuming which may be a sign, among other things, that the animal involved is ill.

Concerning the claims which relate to the added component of a magnet or other separation means, this is not suggested in the patent to Smeester and the patent to Wojcik is directed to its use in a process of butchering animals. There is no suggestion in either Smeester or Wojcik that the disclosures thereof should be combined or otherwise used together relative to

the claims involved, now Claims 96-98. The patent to Wojcik seems, on its face, inapt and hardly analogous. It relates to a process for separating and recovering fat and proteinaceous material from raw material, actually material which comes from a slaughterhouse. It is true that an electromagnet is used to separate magnetic metals from a combination of materials as part of a process before the materials are received by a crusher. But, in the instant invention, the magnetic removal of materials takes place before the feed or fodder is provided to the troughs where it is consumed by the dairy cattle. Thus as indicated above, there is nothing in Wojcik to suggest this procedure.

Incidentally, the sentence bridging pages 7 and 8 of the Official Action to the effect that the law obviates the need for any suggestion or modification to modify as being obvious to one having ordinary skill in the art at the time the invention was made is an incorrect statement of the law.

In view of the new claims submitted herewith, it would appear that the judicially created Doctrine of Double Patenting based on van den Berg U.S. Patent No. 6,371,047, which issued April 16, 2002, is no longer applicable, if it ever was. Essentially that patent is directed to a weighing device which is provided with at least one movable weighing unit for selectively weighing the troughs. In this connection, it should be kept in mind that the instant invention is directed principally to a framework which is located around a central axis that is not claimed, as such, in the van den Berg reference. Although it is possible that perhaps some of the claims in the van den Berg reference could have been included in the instant Application, it is very questionable with the claims as presently set forth that the reverse is true. Accordingly, it is submitted that this is not a situation wherein the judicial Doctrine of Double Patenting applies or where claims herein, considered as a whole or individually, might have been earlier claimed in the van den Berg reference.

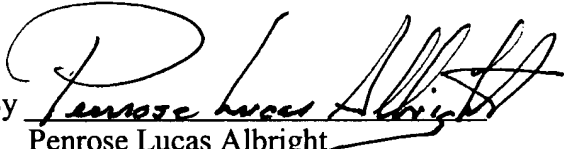
In view of the Request for Continued Examination submitted herewith, further examination and reconsideration of the Application in its amended form is requested.

It is submitted that Applicant has through the use of intellect ingenuity, invented or discovered a new and useful improvement in an article of manufacture for which he is entitled to a patent. Manifestly, the invention meets those conditions of patentability prescribed in 35 U.S.C. §102, and, it is submitted, the differences between the subject matter sought to be patented and the prior art cited or otherwise of record as well as that within the expert knowledge of the Examiner are not such that the subject matter as a whole would have been obvious at the time the invention was made to persons having ordinary skill in the art to which said subject matter pertains.

Accordingly, an allowance is requested.

Respectfully submitted,

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